

PUBLIC

AI Index: AMR 51/105/2006

06 July 2006

UA 189/06 Death penalty / Legal concern

**USA (Mississippi): Bobby Glen Wilcher (m), white, aged 44**

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Bobby Wilcher is scheduled for execution in Mississippi on the evening of 11 July. He was sentenced to death in 1984 for the murder of Katie Belle Moore and Velma Odell Noblin who were stabbed to death in Bienville National Forest in central Mississippi in March 1982. Bobby Wilcher has been on death row for more than two decades. He was 19 years old at the time of the crime. He is now 44. He has given up his appeals.

Bobby Wilcher's lawyer is continuing to seek to have the execution stayed by the courts, arguing that Wilcher should have a mental evaluation to determine his competency to waive his appeals. Bobby Wilcher suffers from bipolar disorder, a serious mental illness for which he takes medication on death row. In addition to bipolar disorder, Bobby Wilcher has a long history of psychological problems, including suicide attempts. On 14 June 2006, a federal judge found Wilcher competent to waive his appeals, after a hearing held at short notice without expert testimony presented.

Over recent years, conditions on Mississippi's death row have been severely criticized, including in relation to the psychological impact of these conditions and the poor mental health care provided. In May 2003, a federal judge ruled that the conditions in the State Penitentiary offended "contemporary concepts of decency, human dignity and precepts of civilization which we profess to possess". Judge Jerry Davis found that death row inmates were being subjected to "profound isolation, intolerable stench and filth, consistent exposure to human excrement, dangerously high temperatures and humidity, insect infestations, deprivation of basic mental health care, and constant exposure to severely psychotic inmates in adjoining cells." Among other things, the federal judge found that: the filthy conditions impacted on the mental health of inmates; the probability of heat-related illness was high for death row inmates, particularly those suffering from mental illness who either did not take appropriate steps to deal with the heat or whose medications interfere with the human body's temperature regulation; the exposure to the severely psychotic individuals was intolerable; the mental health care provided to inmates was "grossly inadequate"; and the isolation of death row, combined with the conditions on it and the fact that its population are awaiting execution, would weaken even the strongest individual. In 2004, the US Court of Appeals "agree[d] that the conditions of inadequate mental health care... do present a risk of serious harm to the inmates' mental and physical health. Again, the obvious and pervasive nature of these conditions supports the... conclusion that [Mississippi Department of Correction] officials displayed a deliberate indifference to these conditions." While the authorities have recently improved the environmental conditions on death row following the lawsuit brought against them, there has been an ongoing struggle to ensure adequate medical and mental health care.

Over the past decade, the UN Commission on Human Rights repeatedly adopted resolutions calling for an end to the use of the death penalty against anyone suffering from any form of mental disorder. Scores of prisoners with histories of mental illness have been executed in the USA since 1977 (see AI report *USA: The execution of mentally ill offenders*, <http://web.amnesty.org/library/Index/ENGAMR510032006>).

#### **BACKGROUND INFORMATION**

In 1972, the US Supreme Court overturned the USA's capital laws after finding that the death penalty was being applied in an arbitrary manner (*Furman v. Georgia*). Four years later, in *Gregg v. Georgia*, the Court looked at new laws drafted by state legislatures and approved them. Executions resumed in January 1977 after almost a decade without them. There have been approximately 500,000 murders in the USA since 1977. In the same period about 7,000 people have been sentenced to death, just over 1,000 of whom have been executed and about 3,300 of whom remain on death row.

The US capital justice system, which attempts to select the “worst of the worst” crimes and offenders for execution, is marked by arbitrariness, discrimination and error. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions concluded in 1998, “race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death” in the USA. In June 2000, the findings of a long-term study were released which concluded that US death sentences are “persistently and systematically fraught with error” that had required judicial remedy from the appeal courts.

About one in 10 of the people executed in the USA since 1977 have been so-called “volunteers”, death row prisoners who had dropped their appeals and “consented” to execution. Any number of factors may lead a prisoner not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless. Rational or irrational, a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing, a human rights violation that is a symptom of a culture of violence, not a solution to it.

Whether or not a prisoner who “asks” to be executed is deluding himself or herself about the level of control they have gained over their fate – after all, they are merely assisting their government in what it has set out to do anyway – the state is guilty of a far greater deception. It is peddling its own illusion of control: that, by killing a selection of those it convicts of murder, it can offer a constructive contribution to efforts to defeat violent crime. In reality, the state is taking to refined, calculated heights what it seeks to condemn – the deliberate taking of human life.

The phenomenon of prisoners “volunteering” for execution is yet another factor contributing to the lottery of the death penalty. To put it another way, given the rate of reversible error found in capital cases, if the approximately 120 “volunteers” executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms by the appeal courts.

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

- expressing sympathy for those affected by the murders of Katie Belle Moore and Velma Odell Noblin and explaining that you are not seeking to downplay the seriousness of these crimes or the suffering caused;
- opposing the execution of Bobby Wilcher, noting his mental illness, the questions about his mental competency that have been raised, the potential impact on his decision to waive his appeals of the appalling conditions that have been found on Mississippi’s death row in recent years, and your opposition to the death penalty in general;
- calling on the Governor to stop this execution and to grant clemency to Bobby Wilcher.

**APPEALS TO:**

Haley Barbour  
Governor of Mississippi  
P.O. Box 139, Jackson  
Mississippi 39205, USA

**Fax: +1 601 576 2791**

**Salutation: Dear Governor**

**COPIES TO:** to diplomatic representatives of USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** All appeals must arrive by 11 July 2006.