

EXTRA 72/01

Death pen**USA (Georgia) Jose Martinez High (m), black, aged 43 or 45**

Jose High is scheduled to be executed in Georgia on 6 November 2001 for a murder committed in July 1976 when he was a teenager. He has been on death row since 1978, well over half his life. He has been diagnosed as having serious mental illness and borderline mental retardation.

Jose High was convicted of the murder of 11-year-old Bonnie Bolloch, white. Bolloch and his stepfather, Henry Phillips, were abducted by three assailants during a robbery of the petrol station where Phillips worked. The victims were driven to an isolated location and shot. Henry Phillips survived and testified against Jose High and his two co-defendants, Nathan Brown and Judson Ruffin. All three were sentenced to death, but the convictions against Brown and Ruffin were overturned on a legal issue on appeal. They subsequently pled guilty in return for life sentences.

Since the trial, three mental health experts have said that Jose High suffers from "a major mental illness with psychotic features", "a seizure disorder", "significant brain damage" and "borderline intellectual functioning". In affidavits, they give their opinion that he suffered from such disorders at the time of the crime, as well as before and after it.

The experts also reviewed Jose High's videotaped "confession" to the police. They state that it clearly shows his mental illness, indicates that he was manipulated by the police during questioning, and calls into question the extent of his role in the crime. For example, one of the affidavits states: "The videotape contains evidence that Jose High did not commit the crime for which he was convicted, ... that he did not knowingly, voluntarily, and intelligently waive his rights [to remain silent and have a lawyer present], ... that he is out of touch with reality, ... that the police are controlling him ...". The video was not disclosed to the defence at the time of the trial and only came to light in 1991.

In prison, Jose High has been diagnosed with schizoaffective and depressive disorders. His medical records over the years reveal that, despite being given powerful medication, he has suffered visual and auditory hallucinations, as well as seizures and suicidal ideation.

In an affidavit, Jose High's grandmother recalls that his father abused him: "he would have the child take off his clothes and beat him mercilessly in front of all the other children in the neighbourhood. I have seen Jose when he was walking through the gate of my house get attacked by his own father, who knocked on him and cut him, his own son... He beat on their mother all the time. It's a wonder he didn't kill her... I used to witness these beatings. So did the children."

In another affidavit, Jose High's elder sister has recalled that their father "used to beat us with a rubber hose mostly, or sometimes with electric wire... When Jose got on my father's nerves, my father gave Jose liquor to drink to shut him up. That started Jose drinking young, before he was even ten years old... By the time he was in high school, he'd fallen and hit his head so many times, I don't think there was hardly any space on his head where he hadn't gotten stitches one time or another."

The jury heard no mitigating evidence at the sentencing phase of the trial because Jose High's lawyer presented no expert or other witnesses. Several of the jurors have recently signed affidavits in support of clemency. One recalls: "I could not be sure from the evidence presented to me which of the three defendants had actually shot and killed 11-year-old Bonnie Bolloch ." Another states: "It was my impression... that Mr High was slow - I mean that he had some mental problems and should be in the hospital... I also believed that because of his mental problems, Mr High probably took more of the blame for what happened that he should have...". A third juror states: "I can see no purpose in executing Mr High... when his co-defendants will never face such punishment themselves." She also recalls that "some of my white fellow jurors had already made up their minds about what should be done to Jose High. I could feel their tension and racial bias...".

At the trial, High's date of birth was given as 19 August 1958, which would have made him 17 at the time of the murder. International law prohibits the use of the death penalty against defendants who were under 18 at the time of the crime. Since the trial, the Georgia authorities have stated that High's birth certificate gives his birth date as 19 August 1956, in which case he was 19 years old in July 1976. The issue remains a disputed one.

The UN Commission on Human Rights has repeatedly urged retentionist countries "not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person". The US organization, the National Alliance for the Mentally Ill takes the position that "the death penalty is never appropriate for a defendant suffering from schizophrenia or other serious brain disorders".

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

- expressing sympathy for the family of Bonnie Bolloch;
- noting evidence that Jose Martinez High has suffered serious mental illness from before the crime, and pointing to national and international opposition to the use of the death penalty against the mentally ill;
- expressing concern at expert opinion that his videotaped confession, not made available to the defence at the trial, calls into question whether Jose High was responsible for the shooting;
- expressing concern that the jury never heard any testimony about Jose High's mental disabilities, or the abuse he suffered as a child, or about the mitigating effect of youth (you may note the dispute over his age);
- noting that several jurors support clemency;
- noting that Jose High's two co-defendants are serving life sentences;
- noting widespread national concern about the fairness and reliability of the capital justice system;
- calling for clemency for Jose Martinez High.

APPEALS TO:

The State Board of Pardons and Paroles
 Floyd Veterans Memorial Building
 Balcony Level, East Tower
 2 Martin Luther King, Jr. Drive, S.E.
 Atlanta, Georgia 30334-4909, USA

Fax: +1 404 651 8502

Salutation: Dear Board Members

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

You may also write brief letters (not more than 250 words) to:

Letters to the Editor, *The Atlanta Journal-Constitution*, PO Box 4689, Atlanta, GA 30302, USA. **Fax: +1 404 526 5611. E-mail: via website:**
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PLEASE SEND APPEALS IMMEDIATELY.