

PUBLIC

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15 November 2004

Further information on UA 294/04 (AMR 51/148/2004, 22 October 2004) - Death penalty / Legal concern

USA (Kentucky) Thomas Clyde Bowling (m), white, aged 51

Kentucky Governor Ernie Fletcher has signed Thomas Bowling's death warrant. He is due to be executed on 30 November.

State Attorney General Greg Stumbo requested the Governor set an execution date after Bowling had exhausted his ordinary court appeals. Attorney General Stumbo said: "Bowling was sentenced to death, not simply a lifetime of litigating about death... I promised during the [election] campaign to be tough on criminals...I am keeping that promise and helping ensure the safety of Kentuckians."

The death penalty, however, has never been proved to have a special deterrent effect over and above imprisonment. Neither does the Attorney General's statement explain how killing someone who is already in prison will help to "ensure the safety of Kentuckians".

In signing the death warrant, Governor Fletcher wrote to Thomas Bowling's appeal lawyers stating that he could find no reason to grant clemency and to exercise his authority to commute the sentence.

The Governor's legal counsel reportedly issued a statement saying that Governor Fletcher, who is a doctor, was not violating the American Medical Association's (AMA) guidelines or ethical standards by signing the death warrant. The AMA's guidelines open by stating that "an individual's opinion on capital punishment is the personal moral decision of the individual. A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution." After Governor Fletcher signed the death warrant, his legal counsel was quoted as saying: "By signing a death warrant, in no way is Governor Ernie Fletcher participating in the conduct of an execution".

The death penalty is a system in which those involved may seek to evade individual moral responsibility in the legalized killing of another human being. Governor Fletcher undoubtedly has the authority to prevent his state from killing Thomas Bowling. He has so far chosen not to exercise that power. He has the power to reconsider his decision.

BACKGROUND INFORMATION

Tina and Eddie Earley were shot dead outside their small dry-cleaning business in the city of Lexington, Kentucky on 9 April 1990. Thomas Bowling was arrested on 11 April in neighbouring Tennessee. His car and a .357 calibre handgun were found hidden at his family's home in rural Kentucky.

Thomas Bowling's murder trial was held in December 1990. Among the state's witnesses were two eyewitnesses, the first of whom described the gunman as six feet tall (Bowling's approximate height) and wearing a black jacket and hat (Bowling owned such items). He had not been able to pick Bowling out at a police line-up, however, and also admitted that he may have told police that the gunman had long brown hair, a dark complexion and possibly a moustache – none of which described Bowling. The second eyewitness could not be located at the time of the trial, and instead the jury was played an audiotape of a police interview with him on the day of the shootings. His description did not identify Bowling. The state also presented a witness who said that he had sold a .357 gun to Bowling a few days before the shootings. Expert testimony identified Thomas Bowling's car as the vehicle used in the crime and suggested that the bullets fired at the scene could have come from the retrieved gun. However, the ballistics expert admitted

that there could be millions of guns that could have fired the bullets. The defence lawyers presented no witnesses at the guilt/innocence stage of the trial.

At the sentencing, the defence presented six witnesses. A former work colleague and two jail employees testified to Thomas Bowling's good character, and his mother, sister and son testified about their love for him, his marriage break-up, his dependence on alcohol, his recent depressed mental and emotional state, and his limited mental ability. The jury voted for a death sentence.

Thomas Bowling's appeal lawyers continue to challenge his death sentence on the grounds that he has mental retardation. In 1990, shortly before Bowling's trial, Kentucky legislated to prohibit the execution of people with mental retardation. His trial lawyers did not raise the issue. In 2002, in *Atkins v. Virginia*, the US Supreme Court outlawed the use of the death penalty against such offenders. It left it up to each individual state how to comply with the ruling. At the age of 12 or 13, Thomas Bowling's IQ was assessed at 74, which with the margin of error in such assessments places him within the range for possible mental retardation if coupled with adaptive deficits which Bowling is said to have. He was described as a "follower" and easily manipulated.

Thomas Bowling's lawyers have also raised doubts about his conviction (see original UA). The evidence against him is circumstantial – there is no physical evidence placing him at the scene of the crime, no confession, no identification of him as the gunman, the weapon linked to him was one of millions that could have been used in the crime, and while the car used in the crime was his, there is no proof that he was driving it at the time. The state did not establish a motive for Thomas Bowling to kill the Earley couple, whom he did not know and had never met. Thomas Bowling's lawyers continue to seek relief in the courts.

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 family and friends of Tina and Eddie Earley, and explaining that you are not seeking to condone the manner or their deaths, or to in any way minimize the suffering caused;
- noting evidence that Thomas Bowling has mental retardation, and that if this is the case his execution would violate state and federal law;
- expressing concern at the doubts surrounding his conviction, and reminding the governor of the many wrongful convictions and other errors that have been revealed in capital cases in the USA;
- expressing regret that the governor signed a death warrant in this case, and has so far rejected using his undoubted authority to stop this execution;
- calling on the governor to reconsider his decision and to grant clemency.

APPEALS TO:

Ernie Fletcher, Governor of Kentucky
700 Capital Avenue, Suite 100, Frankfort, KY 40601, USA
Fax: +1 502 564 2517
Email, via website: <http://governor.ky.gov/contact.htm>
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.