

# URGENT ACTION

## GEORGIA SETS FIRST EXECUTION IN FOUR YEARS

Willie Pye is scheduled to be executed in Georgia on 20 March 2024. Now 58, he was sentenced to death for a murder committed in 1992 when he was 27. In 2021, federal judges overturned the death sentence because of the trial lawyer's failure to investigate and present evidence of Pye's significantly sub-average intellectual functioning and traumatic childhood. This decision was reversed on appeal, not on the merits but on procedural grounds under a 1996 federal law. His lawyers have presented evidence that he has intellectual disability, but under Georgia's requirement to prove this 'beyond a reasonable doubt', his death sentence has been upheld.

### TAKE ACTION: WRITE AN APPEAL IN YOUR OWN WORDS OR USE THIS MODEL LETTER

State Board of Pardons and Paroles  
2 Martin Luther King, Jr. Drive SE  
Suite 430, Balcony Level, West Tower  
Atlanta, GA 30334, USA  
Email: [GaParoleBoard@pap.ga.gov](mailto:GaParoleBoard@pap.ga.gov)

Dear Members of the State Board of Pardons and Paroles,

Willie Pye is scheduled to be executed on 20 March 2024, which would be Georgia's first execution in four years. I urge you to ensure that this execution does not go forward.

Since 2002, the execution of people with intellectual disability has been unconstitutional in the USA. Unlike any other state in the USA, Georgia requires such a claim to be proved beyond a reasonable doubt. It is undisputed that Willie Pye has significantly subaverage intellectual functioning, with an IQ of 68. State and defence experts agree that Willie Pye presents adaptive deficits – the second element of an intellectual disability assessment – but the state's expert disputed whether they meet the requisite standard, even though they "affect his ability each and every day to function in the community". For the defence, an expert in intellectual disability is in no doubt from her own testing that Willie Pye's deficits met this second element.

In 1989, seven years before Willie Pye's sentencing, the US Supreme Court held that evidence of intellectual disability was a factor that "may well lessen a defendant's culpability for a capital offense", and for "an individualized determination of whether death is the appropriate punishment" to be made, sentencers must be able to "consider and give effect to mitigating evidence of [intellectual disability] in imposing sentence". At Willie Pye's sentencing, the jurors were not able to do so as they had heard no evidence of his low intellectual functioning. This was because the defence lawyer had failed to investigate or present anything but a meagre amount of mitigation, including no mental health evidence and virtually nothing about Willie Pye's traumatic childhood of severe abuse, deprivation and neglect. A three-judge panel found in 2021 that it was clear the lawyer's representation had been constitutionally inadequate, and that Willie Pye should get a new sentencing, but the full court overturned this, not on the merits, but on legal technicalities relating to the amount of federal deference due state court decisions.

**The power of executive clemency exists precisely as a failsafe against injustice that has been left unremedied by the courts. I appeal to you to use your authority to ensure that Willie Pye's death sentence is commuted.**

Yours sincerely,

## ADDITIONAL INFORMATION

Willie Pye, a Black man, was arrested in 1993 and charged with the 1992 murder of his former girlfriend. The Spalding County public defender was appointed to represent him. He acted as Willie Pye's sole lawyer, and during this time he also represented four other capital defendants as well as hundreds of others charged with non-capital offences. As noted by a federal court in 2021, according to his billing records, the lawyer spent about 150 hours preparing for Willie Pye's trial (and a total of little over 200 hours including court hearings and the trial itself). The American Bar Association has pointed out that at least 10 times this amount of time is typically required for appropriate representation in a capital case that proceeds to trial. After the jury voted to convict Willie Pye, the trial moved into its sentencing phase. This lasted one morning and ended in a death sentence.

The Antiterrorism and Effective Death Penalty Act (AEDPA), aimed in part at facilitating executions, became law in 1996. Under the AEDPA, according to the US Supreme Court, federal courts must operate a "highly deferential standard for evaluating state-court rulings, which demands that state court decisions be given the benefit of the doubt". Even before the AEDPA, when federal courts addressed claims of inadequate defence representation, "judicial scrutiny of counsel's performance [had to] be highly deferential". The AEDPA added another layer; now federal review had to be "doubly deferential", said the Supreme Court. In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions found that the AEDPA had "further jeopardized the implementation of the right to a fair trial" under international law. The Act has contributed to manifest injustices, including in [Georgia](#).

In 2021, a three-judge panel of the US Court of Appeals for the 11<sup>th</sup> Circuit unanimously found that this was one of the rare cases under the AEDPA in which a claim of ineffective assistance of counsel denied on the merits in state court is found to warrant relief on federal review. The panel concluded that the state court analysis was based on unreasonable factual determinations and an unreasonable application of federal law, thereby freeing the panel to fully review the claim anew. The panel concluded that it was quite evident that the trial lawyer had not provided constitutionally adequate representation, having conducted only the "most cursory" of investigations into mitigation evidence, including failing to obtain a mental health evaluation. As a result of his "paltry" investigation, the jury heard "virtually none of the "powerful mitigating evidence" presented on appeal, including evidence of Willie Pye's subaverage intellectual functioning, frontal lobe brain damage and severe depression, or of his traumatic childhood in which involved "near-constant physical and emotional abuse, extreme parental neglect, endangerment, and abject poverty" which had "pervaded" his daily life as a child as well as his "troubled adulthood". The US Supreme Court had long before Willie Pye's trial recognized the validity of childhood abuse as mitigating evidence in capital trials. The 11<sup>th</sup> Circuit panel found that the evidence presented on appeal "paints a vastly different picture" to what was presented to the jury. Willie Pye had been prejudiced by his lawyer's failure and was entitled to a new sentencing.

The state appealed for a rehearing before the full 11<sup>th</sup> Circuit, which in 2022 reversed the panel's decision. It did not dispute the panel's finding that the lawyer had failed to prepare for trial but ruled that, Willie Pye had not shown that his case was one of the rare cases permitting federal relief under the AEDPA. Two judges dissented (and two others joined the ruling "despite reservations" about it). The dissent noted that "the majority opinion does not defend trial counsel's performance" and accused the majority of rendering the writ of habeas corpus "illusory – impossible – even to obtain" and denying Willie Pye the "second chance he deserv[ed] to convince a jury to spare [his life]".

At the time of his trial, Georgia was the only state in the USA prohibiting the execution of people with intellectual disability, throwing into even starker relief his trial lawyer's failure to investigate this issue. In 2002, the US Supreme Court finally took the step of categorically prohibiting the use of the death penalty against such individuals. Willie Pye's current lawyers have presented compelling evidence that he has an intellectual disability. To prove this disability, a defendant must establish (1) significantly subaverage intellectual functioning (an IQ of under 70-75), (2) adaptive deficits associated with this, and (3) manifestation prior to the age of 18. Unlike any other state in the USA, Georgia law requires that intellectual disability be proved beyond a reasonable doubt. It is undisputed that Willie Pye has significantly subaverage intellectual functioning and an IQ of 68, and school records and teacher testimony indicate it manifested before the age of 18. The only point of dispute is around adaptive deficits because the state here presented an expert who agreed Willie Pye has undoubted adaptive deficits but disagreed that those deficits were significant enough to meet the second element of an intellectual disability assessment. Under the uniquely strict "beyond a reasonable doubt" standard, this was enough to keep Willie Pye under sentence of death.

There have been 1,584 executions in the USA since 1976. Georgia accounts for 76 of these, the most recent of which was conducted on 29 January 2020. Amnesty International opposes the death penalty unconditionally. International human rights law and standards require that anyone facing the death penalty must be provided "adequate legal assistance at all stages of the proceedings", and violations of fair trial guarantees as provided under Article 14 of the International Covenant on Civil and Political Rights render the death sentence arbitrary. International law also prohibits the execution of people with intellectual disability.

**PREFERRED LANGUAGE TO ADDRESS TARGET:** English

**PLEASE TAKE ACTION AS SOON AS POSSIBLE UNTIL:** 20 March 2024.

**NAME AND PRONOUN:** Willie Pye (he/him).

**LINK TO PREVIOUS UA:** n/a