

PUBLIC

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EXTRA 13/03

Death penalty / Legal concern

12 February 2003

USA (Oklahoma)

Walanzo Deon Robinson (m), black, aged 32

Walanzo Robinson is scheduled to be executed in Oklahoma on 18 March. He was sentenced to death in June 1990 for the murder of Dennis Eugene Hill, black, in May 1989. Walanzo Robinson had reached his 18th birthday a month before the murder.

Dennis Hill and Walanzo Robinson were both dealing drugs in Oklahoma City. Dennis Hill was shot in the early hours of 19 May 1989 after he and Walanzo Robinson allegedly had an argument. Walanzo Robinson, who maintains that he was in the area of the killing but that he did not shoot Dennis Hill, was convicted on the basis of eyewitness testimony, a notoriously unreliable form of evidence. Indeed, witnesses had given differing accounts of the crime. There was no physical evidence linking Walanzo Robinson to the shooting. His trial lasted for two days.

The jury consisted of 11 whites and one African American. Post-conviction investigations by the defence revealed that the sole black juror had not wanted to vote for the death penalty. The juror told an investigator that she had been subjected to mental and physical intimidation by fellow jurors, who "yelled and screamed" at her, and "slammed down papers and their hands or fists on the table" because she was the only person to fail to vote for death. She said that fellow jurors had said that she was just "one nigger helping out another" and that the "jury was not leaving the room without a death sentence". After eight hours of such pressure, she said that she relented and voted for death because she was "tired of the hostility and cruelty of the other jurors". Another defence investigator signed an affidavit that he had spoken to the jury foreman. The latter allegedly confirmed to the investigator that the African American woman had been the only juror not wanting to vote for death, and that he, the foreman, had been among those haranguing her until she changed her mind.

In general, the rules of evidence do not allow US courts to consider juror allegations in post-conviction proceedings in order to preserve the state's interest in protecting the jury deliberation process. The appeal courts have chosen not to make an exception in this case. In 1999, a federal district judge acknowledged that the allegations made by the juror, "if proven true, are egregious and intolerable". Citing a 1915 US Supreme Court precedent on this issue, the US Court of Appeals for the 10th Circuit wrote that choosing not to review the juror affidavit in the Walanzo Robinson case "represents a choice of the 'lesser of two evils' – not redressing a private litigant's injury in favour of upholding the public policy promoting private and unassailable juror deliberations".

However, such evidentiary restrictions do not apply to executive clemency, a power which exists in part to compensate for the inability or unwillingness of the judiciary to take certain evidence into account. In March 1999, for example, Governor Mike Huckabee of Arkansas commuted the death sentence of Bobby Ray Fretwell. The governor said that he had been swayed by an appeal from one of the trial jurors for the execution to be stopped. The juror wrote that he had been the only one of the 12 initially to vote for life, but had changed his vote to death because he felt intimidated and did not want to be shunned by his community.

There will be a clemency hearing for Walanzo Robinson before the state Pardon and Parole Board on 12 March 2003. The Governor cannot commute a death sentence unless the Board make a recommendation for him to do so. He can reject such a recommendation. He also has the power to issue a temporary reprieve, which he could use to ask the Board to reconsider a vote against clemency.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. Since executions resumed in the USA in 1977, there have been 830 executions nationwide, of which 56 have been carried out in Oklahoma. In 2001,

Amnesty International published a major report on its range of concerns relating to Oklahoma's death penalty which the organization provided to the state's legislature and executive authorities (see *Old Habits Die Hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001).

In its 2001 report on the USA, the UN Committee on the Elimination of Racial Discrimination urged the authorities "to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers..." Walanzo Robinson's case is not the first time that racist coercion of a black juror by white jurors has been alleged in the USA. For example, William Hance, black, was executed in Georgia in 1994. The only African American juror on his jury later came forward to say that she had not voted for the death penalty, but that the rest of the jury had decided to tell the judge that they had reached a unanimous verdict for execution. The black juror said that she had been too intimidated by the misconduct and racism in the jury room to object. African American Louis Truesdale was executed in South Carolina in 1998. The only black juror later came forward to say that she had wanted to vote for life imprisonment, but had been intimidated by the racism prevailing in the jury room into changing her vote to death.

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 Dennis Eugene Hill, and explaining that you are not seeking to excuse the manner of his death or the suffering it will have caused;
- noting that the conviction of Walanzo Robinson was based solely on eyewitness testimony, a notoriously unreliable form of evidence;
- expressing deep concern at the allegations made by the sole African American juror at his trial that she only changed her vote to death under mental and physical intimidation from her fellow jurors;
- noting that the federal district court said that, if true, what the juror alleged in this case would be "egregious and intolerable";
- noting that the rules of evidence have not allowed the appeal courts to review this juror evidence, adding that executive clemency authorities are not restricted by such rules, and that the power of executive clemency exists in part to compensate for the inability of the judiciary to take certain factors into account (you may note the 1999 Fretwell case in Arkansas);
- calling for clemency for Walanzo Robinson, in the interests of ending racism and promoting justice and the reputation of the State of Oklahoma and the USA as a whole;
- in appeals to the Governor, you should urge that, in the absence of a clemency recommendation from the Pardon and Parole Board, he use his power of reprieve to stop this execution.

APPEALS TO:

Appeals to the Board should arrive by 11 March (appeals to the Governor can be sent up to 18 March). Please quote Walanzo Robinson's inmate number: #189399 (on the outside of envelope if sending a letter).

The Pardon and Parole Board
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Email: terry.jenks@pbb.state.ok.us
Salutation: Dear Board members

Governor Brad Henry
Office of the Governor
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Salutation: Dear Governor

COPIES TO: Diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.

