

PUBLIC

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EXTRA 14/03

Legal concern

18 February 2003

USA (Florida)

Lionel Tate (m), black, aged 16

Two years after Lionel Tate began a sentence of life imprisonment without the possibility of parole for a crime committed when he was 12 years old, his lawyers are about to seek clemency for him from the Governor of Florida. Presented with a clemency petition in June 2001, Governor Jeb Bush refused to waive a state rule requiring inmates to serve at least two years before they can be considered for clemency. Now that two years have passed, Amnesty International is calling on the Governor to commute Lionel Tate's sentence in line with international law and standards.

On 25 January 2001, Lionel Tate was convicted as an adult of the first-degree murder of his playmate, six-year-old Tiffany Eunick, who died on 28 July 1999. The jury rejected the defence claim that the 12-year-old boy had accidentally killed the much smaller girl while mimicking professional wrestling moves that he had seen on television. On 10 March 2001, Lionel Tate was sentenced to life imprisonment without parole. If the sentence is not reduced on appeal or by executive clemency, he will die in prison. He is currently held in the Okeechobee Juvenile Offender Correction Center in central Florida.

In Florida, the Governor has the unfettered discretion to grant clemency with the approval of at least three members of the Cabinet. A clemency petition on Lionel Tate's case will be presented to Governor Bush in late February or early March 2003. The defence team will also present new evidence supporting the claim that the death of Tiffany Eunick was accidental.

Lionel Tate's sentence contravenes the principle that the state's treatment of children who commit crimes, however serious, must focus on the possibility of the child's rehabilitation and successful reintegration into society. Indeed, under international standards, maximizing this possibility should be one of the primary guiding principles motivating the state's response.

Article 37(a) of the Convention on the Rights of the Child (CRC) states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". One hundred and ninety one countries have ratified this treaty. The USA has not ratified it, but has signed it, thereby binding itself under international law not to do anything which would defeat the object and purpose of the treaty, pending its decision on whether to ratify.

Article 37(b) of the CRC calls upon states to use imprisonment against a child "only as a measure of last resort and for the shortest appropriate period of time". Article 40 calls upon states to treat children found to have violated the law in a way that "takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society". Article 14(4) of the International Covenant on Civil and Political Rights, which the USA ratified in 1992, states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". The UN Rules for the Protection of Juveniles deprived of their Liberty furthermore state that any such deprivation should only be under conditions that guarantee "meaningful activities and programmes which would serve to promote and sustain [the juveniles'] health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society".

BACKGROUND INFORMATION

In response to public concern about crimes committed by young people, over the last 20 years the US federal and state governments have significantly expanded the role of the general criminal justice system

with respect to children and increased the severity of sanctions that courts may impose on children. The growing tendency in the USA to prosecute and punish children as if they were adults, rather than in the separate juvenile justice system, is inconsistent with the approach encouraged by international standards, that governments should establish laws, procedures, authorities and institutions specifically for children.

There are many people in the USA serving life imprisonment without the possibility of parole for crimes committed when they were under 18. Amnesty International knows of none who was as young as Lionel Tate at the time of the offence. His case is therefore starkly illustrative of a wider problem, and the organization is taking this action as part of its efforts to persuade US authorities to bring their country into line with international standards on the treatment of child offenders. In such cases, Amnesty International does not specify in detail what sentence is appropriate, only that it should conform to international standards.

In his statement on 6 June 2001, although rejecting consideration of clemency for Lionel Tate at that time, Governor Jeb Bush said: "As I have previously expressed, I am also concerned about the law which can require a life sentence – without any possibility of parole – for a crime committed by a 12-year-old child. I am not sure it is right to consign such a young child to a life without any hope... This is a concern that I know is shared by many Floridians". Lionel Tate's case was also the subject of UA 133/2001 (AMR 51/077/2001, 1 June 2001).

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

- expressing sympathy for Tiffany Eunick's family, explaining that you are not seeking to belittle her tragic death or the suffering it has caused;
- expressing concern, however, that Lionel Tate, who was 12 years old at the time, remains under a sentence of life imprisonment without the possibility of parole, which violates international law;
- noting that the sentence has received widespread international attention, being out of step with commonly held views of juvenile justice, that such cases damage Florida's, and the USA's, reputation in the world, and noting the Governor's statement of 6 June 2001 expressing his own concern;
- noting that international law specifies that imprisonment of children must only be a measure of last resort and for the shortest appropriate period of time;
- calling for the sentence to be commuted and that the state's response be aimed at maximizing Lionel Tate's potential for successful reintegration into society, in line with international standards recognized around the world.

APPEALS TO:

Governor Jeb Bush, Executive Office of the Governor, Tallahassee, FL 32399, USA

Fax: +1 850 487 0801

Email: fl_governor@myflorida.com

Salutation: Dear Governor

COPIES TO:

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and to diplomatic representatives of the USA accredited to your country.

You may also express your concerns in a brief "letter to the editor" (not more than 250 words) to:

The Readers' Forum, *The Miami Herald*, One Herald Plaza, Miami, Florida 33132-1693, USA

Fax: +1 305 376 8950. E-mail: HeraldEd@herald.com

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 20 March 2003.