

PUBLIC

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EXTRA 33/03

Death penalty

USA (Virginia)

Bobby Wayne Swisher (m), white, aged 27

Bobby Swisher is scheduled to be executed in Virginia on 1 July. He was sentenced to death in 1998 for the capital murder of 22-year-old Dawn McNees Snyder in February 1997.

On 5 February 1997, Dawn Snyder disappeared from the florist's shop where she worked. Just over two weeks later, her body was found near a riverbank two miles away. Bobby Swisher was arrested after one of his friends told police that Swisher had admitted to abducting and raping Dawn Snyder before cutting her throat and throwing her in the river to die.

Studies in the USA have shown that two highly aggravating factors in the minds of capital jurors – factors making them more likely to vote for a death sentence – are a defendant's perceived lack of remorse and their perceived future dangerousness.

According to his appeal lawyers, Bobby Swisher was prescribed medication for depression four months prior to his trial. However, the course of medication was not started until two days before the proceedings began. The drugs allegedly had a sedative effect on the defendant causing his trial lawyers to decide not to put him on the witness stand. However, they did not ask for a postponement of proceedings or for a hearing to determine his competency to stand trial, that is, his ability to understand the proceedings and assist in his defence. In post-conviction affidavits, two of the trial jurors said that Bobby Swisher had looked like a "zombie" and had "showed no remorse".

At the sentencing phase of the trial, the friend who had gone to the police testified that after he had confessed to the crime, Bobby Swisher had said that he could "do it again"; a highly damaging testimony in relation to the defendant's possible future dangerousness. However, the jury was left unaware of the inconsistency between this testimony and what the friend had originally told the police, namely that he did not remember hearing Swisher say he could "do it again". The claims that the state knowingly elicited perjured testimony from this witness, or that Swisher's inexperienced trial lawyers were ineffective for failing to draw the jury's attention to the inconsistency in the testimony, have been rejected by the appeal courts. The claim that the prosecutor unlawfully failed to turn over to the defence lawyers evidence that the friend had sought and received a reward in exchange for his testimony has also been dismissed.

In April 2003, Michael Lenz, another Virginia death row inmate, was granted a new sentencing hearing by the Virginia Supreme Court on a claim concerning a defective jury verdict form. The same form was reportedly used in Swisher's trial. However, in Swisher's case the claim has been procedurally defaulted as an appeal issue because it was not raised early enough in the proceedings.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, unconditionally. The death penalty is a symptom of a culture of violence, not a solution to it. It has not been shown to have any special deterrent effect. It carries the risk of irrevocable error. It denies the possibility of rehabilitation and reconciliation. It extends the suffering endured by the family of the murder victim to the family of another, that of the condemned individual. Evidence continues to mount that death sentences in the USA are handed down by a capital justice system characterized by arbitrariness, discrimination and error. Authorities in the USA, including Virginia, have violated international standards in their pursuit of the ultimate punishment, including by imposing it on defendants who were under 18 at the time of the crime, the mentally impaired, those who

were inadequately represented, those whose guilt was in doubt, and foreign nationals denied their consular rights.

Virginia lies behind only Texas in the number of executions carried out since the USA resumed judicial killing in 1977. Virginia accounts for 88 of the 856 executions carried out nationwide since then.

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 Dawn McNeese Snyder, explaining that you are not seeking to condone the manner of her death or the suffering it will have caused;
- opposing the execution of Bobby Wayne Swisher;
- expressing concern at allegations of ineffective legal representation and prosecutorial misconduct in this case;
- noting that the jury were unaware of inconsistencies in the testimony of the state's key witness;
- noting evidence of Bobby Swisher's medically sedated state during trial, and expressing concern that this could have contributed to jurors perceiving a lack of remorse on his part;
- urging the Governor to commute Bobby Swisher's death sentence.

APPEALS TO:

Governor Mark R. Warner

State Capitol, 3rd Floor

Richmond, Virginia 23219, USA

Telegram: Governor Warner, Richmond, Virginia, USA

Fax: +1 804 371 6351

Email via website: http://www.governor.state.va.us/Contact/email_form.html

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.