

USA (Texas) Johnny Joe Martinez (m), Hispanic, aged 29

Johnny Martinez is scheduled to be executed in Texas on 22 May 2002. He was sentenced to death in 1994 for the murder of Clay Peterson in 1993.

In the early hours of 15 July 1993, after a night of heavy drinking, 20-year-old Johnny Martinez robbed a grocery shop in Corpus Christi on the Texas coast, stabbing Clay Peterson, the shop assistant, in the process. Martinez testified at the trial that he left the shop, went to the beach and cried. Within half an hour of the murder he had telephoned the police from a nearby motel, and told them of the crime. When the police arrived, Martinez surrendered without resistance. The arresting officer described him as "very cooperative" and "concerned about what happened".

At the police station, Johnny Martinez confessed to stabbing Clay Peterson. He assisted the police in their search for the murder weapon. The interrogating officer described Martinez as "very upset" and "remorseful". At the sentencing phase of the subsequent trial, Johnny Martinez expressed his remorse and an inability to explain why he had committed this act of violence. He had no history of violence and no criminal convictions.

A death sentence can only be passed in Texas if the jury unanimously agrees that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society" - the so-called "future dangerousness" question. The Texas Court of Criminal Appeals (TCCA) upheld Martinez's death sentence in 1996. Four of the nine judges dissented, saying that the evidence of his future dangerousness was insufficient to support a death sentence, and that a "proper analysis" of the relevant precedent demanded that the death sentence be overturned.

One of the dissenters wrote: "we have the duty of ensuring death sentences are imposed in an evenhanded, rational and consistent manner... Today, the majority shirks that responsibility and issues an opinion that insulates jury verdicts from meaningful appellate review... In light of the majority opinion, there is no longer any assurance that the death penalty will not be wantonly or freakishly imposed". Another of the dissenters wrote: "Every murder committed in the course of a robbery is in some way cold-blooded and senseless. Each such murder does not, however, merit the death penalty, our most final punishment... This opinion will probably set a precedent ensuring that never again will there be facts that this Court will find insufficient to support an affirmative answer to the [future dangerousness question]". The dissent continued that the majority had "contorted" the facts of the case in order to uphold the death sentence.

The TCCA then appointed a lawyer to represent Johnny Martinez for his further, *habeas corpus*, appeals. This lawyer had never handled such an appeal, and asked the court on several occasions for permission to withdraw from the case. In 1997, the lawyer filed an appeal, without having once spoken to or visited his client, having refused to accept telephone calls from him, and having sent him only one brief letter. The appeal was five and a half pages long. Two of the four claims raised comprised 17 lines of text with three inches of margin, with no cases cited. *Habeas corpus* applications filed by adequately funded, experienced lawyers routinely run to more than 150 pages because of the number of issues raised and the complexity of the law. The appeal did not challenge

the adequacy of Johnny Martinez's trial representation, even though his trial lawyer had done little investigation or preparation for the sentencing phase.

The TCCA dismissed the appeal. One of the judges dissented, citing the brevity and lack of quality of the appeal. He wrote that the merits of the appeal should not be assessed, but that the adequacy of the appeal lawyer's performance should be examined. The lawyer himself agreed with the dissent, again asking to withdraw from the case because of his inexperience.

New lawyers later appointed for Martinez's federal appeals discovered substantial mitigating factors that had not been presented to the trial jury, including evidence that Johnny Martinez had been subjected to sexual and physical abuse as a child, and of his dysfunctional family background, including his mother's selling and use of heroin. Given Johnny Martinez's youth, intoxication, remorse, cooperation with the police, and non-violent history, such mitigation evidence, the federal appeal lawyers argued, might have affected the sentence. However, the federal courts have ruled that the claim of inadequate trial counsel is procedurally barred from being evaluated because the claim was not raised in the state courts. The federal district court expressed concern at this "harsh" outcome - given that the issue was lost to judicial review because of the incompetence of the state *habeas* lawyer - but the federal court considered itself bound by precedent.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. In the USA it is a punishment supposedly reserved for the "worst of the worst". In reality, it is disproportionately reserved for the poor and the inadequately represented. International standards require that capital defendants be provided with adequate legal assistance "at all stages of proceedings".

Since the USA resumed executions in 1977, 776 prisoners have been put to death in 32 states. Texas accounts for 267 of these executions. There have been 27 executions in the USA this year, 11 of them in Texas.

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 Clay Peterson, and explaining that you are not seeking to excuse the manner of his death;
- opposing the execution of Johnny Martinez;
- suggesting that his remorse and cooperation with the police do not indicate a case of the "worst of the worst" for which the USA supposedly reserves the death penalty, noting that four Court of Criminal Appeals judges held that there is insufficient evidence to support a death sentence;
- expressing deep concern at the incompetence of his appointed appellate counsel, and failure of his trial lawyer to investigate or present available mitigating evidence, noting that international standards demand adequate legal representation at all stages of proceedings;
- calling for clemency in the name of fairness and decency.

APPEALS TO:

Texas Board of Pardons and Paroles
 Executive Clemency Section
 PO Box 13401, Capitol Station
 Austin, Texas 78711, USA

Fax: + 1 512 467 0945

Salutation:Dear Board Members

COPIES TO:

Governor Rick Perry
Office of the Governor
PO Box 12428, Austin, Texas 78711-2428, USA
Fax: + 1 512-463-1849

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

PLEASE SEND APPEALS IMMEDIATELY.