

URGENT ACTION

WOMAN PUT TO DEATH IN 500TH TEXAS EXECUTION

Kimberly McCarthy was put to death by lethal injection on 26 June, becoming the 500th person to be executed in Texas since judicial killing resumed in the USA in 1977.

Kimberly McCarthy had been sentenced to death in 1998 in Dallas County, Texas, for the murder of her 71-year-old neighbour Dorothy Booth, who was stabbed to death in her home in 1997. The conviction and death sentence were overturned in 2001. Kimberly McCarthy was retried in 2002 and again sentenced to death.

Kimberly McCarthy was black, Dorothy Booth white. At the 2002 retrial, the jury consisted of 11 whites and one black. In a legal brief filed in June 2013 in state court, Kimberly McCarthy's new lawyer sought a stay of execution so she could present evidence of racial discrimination during jury selection, and to challenge the failure of her previous lawyers to raise this claim at trial or on appeal. No court had been presented with or considered this claim.

On 24 June, the Texas Court of Criminal Appeals refused to stay the execution or consider the merits of the application for a writ of habeas corpus, on the grounds that the claims should have been raised earlier. One of the judges "strongly" dissented against "this cursory dismissal". She wrote that the Court should have taken the case, in light of the 28 May 2013 US Supreme Court ruling (*Trevino v. Thaler*) as Kimberly McCarthy's lawyer had argued. In *Trevino* the Supreme Court ruled that a claim of ineffective assistance of trial counsel could still be judicially reviewed on its merits, even if it had not been raised earlier, because the Texas procedural framework had denied the prisoner a meaningful opportunity to do so during his or her initial appeal.

The dissenting judge, Judge Elsa Alcalá, said: "The sound of crickets. Silence. That is this Court's response to the Supreme Court's recent decision in *Trevino v. Thaler*. . . . Rather than address the implications of this important decision, this Court, by order and without opinion, cites Kimberly McCarthy, applicant, for abuse of the writ and dismisses her subsequent application for a writ of habeas corpus. In this application, applicant contends that her trial counsel was ineffective for failing to object to the State's allegedly discriminatory use of peremptory challenges during jury selection in her capital-murder trial, and that her initial habeas attorney was also ineffective for failing to raise the issue of trial counsel's deficient performance in her initial application for a writ of habeas corpus. . . . At the very least, this Court should address applicant's arguments regarding the implications of *Trevino* and write an opinion explaining what approach we will take going forward. Instead, there is only the sound of crickets".

One of the other judges said that while he was "not unsympathetic" to Judge Alcalá's dissent, and agreed that it would be justifiable for the Texas Court of Criminal Appeals to "take a second look" at appeal procedures in the wake of the *Trevino* ruling, he was "not inclined" to view the McCarthy case as the "appropriate vehicle" in which to do so.

Kimberly McCarthy was executed by lethal injection shortly after 6pm, Texas time, on 26 June.

There have been 18 executions in the USA this year, eight of them in Texas. Texas accounts for 500 of the 1,338 executions carried out in the USA since the US Supreme Court approved new capital statutes in 1976. For further information, see <http://www.amnesty.org/en/library/info/AMR51/041/2013/en>

No further action by the UA network is requested. Many thanks to all who sent appeals.

This is the first update of UA 160/13 Further information: <http://www.amnesty.org/en/library/info/AMR51/039/2013/en>

Name: Kimberly McCarthy

Gender m/f: f

Further information on UA: 160/13 Index: AMR 51/042/2013 Issue Date: 27 June 2013

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