

EXTRA 46/00

Death pen**USA (Oklahoma) James Glenn Robedeaux, Native American, aged 51**

James Robedeaux is scheduled to be executed in Oklahoma on 1 June 2000. He was sentenced to death in 1986 for the 1985 murder of Nancy McKinney. His clemency hearing before the state Pardon and Parole Board is set for 2pm on 23 May, when the Board will make its recommendation to the Governor.

McKinney and Robedeaux were living together when she disappeared on 22 September 1985. Three parts of her body - a leg, a part of her skull, and a piece of her arm and hand - were found in late 1985 and early 1986 in three separate locations. Although there was significant circumstantial evidence linking Robedeaux to her death and dismemberment, the authorities could not determine the actual cause of death, and to this day it is not known how or why Nancy McKinney died. Nevertheless, the state obtained a verdict of first-degree murder (defined in Oklahoma as an unlawful killing committed with "malice aforethought").

Perhaps the most incriminating evidence against Robedeaux, although still not proof of first-degree murder, was a statement by Lisa Austin, who lived with him from October 1985 until his arrest. She said that he had told her that he had killed McKinney and "cut her up". However, the credibility of this statement has been called into question because Lisa Austin only made it shortly before the first pre-trial hearing, despite having had several previous contacts with officials investigating McKinney's death.

The courts have rejected appeals that the state has not proved beyond a reasonable doubt that McKinney was the victim of premeditated first-degree murder, rather than, for example, an accident, negligence, or a heat-of-passion act of violence, followed by an improper disposal of the body.

At the trial, the jurors were given two choices: to find James Robedeaux guilty of first degree murder or to acquit him. The judge refused to allow them to consider second degree murder or first degree manslaughter as the defence had requested. The jury returned a verdict of first-degree murder.

In July 1999, a three-judge panel of the 10th Circuit Court of Appeals denied Robedeaux's appeal, rejecting arguments that the judge should have given the jury at least one of these two extra sentencing options. In December 1999, a different three-judge panel of the same court upheld the appeal of another Oklahoma death row prisoner, Kenneth Hogan, who had made the same claim. He was sentenced to death in 1988 after confessing to the fatal multiple stabbing of his friend Lisa Stanley. The 10th Circuit accepted that the trial judge in this case had erred in not allowing the jury to consider verdicts of first-degree manslaughter and second degree murder. Kenneth Hogan has been granted a new trial. James Robedeaux is facing execution.

US Supreme Court precedent states that "when the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense - but leaves some doubt with respect to an element that would justify conviction of a capital offense - the failure to give the jury the 'third option' of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction. Such a risk cannot be tolerated in a case in which the defendant's life is at stake. As we have often stated, there is

a significant constitutional difference between the death penalty and lesser punishments" (*Beck v Alabama*, 1980).

Among the international standards which govern the use of the death penalty in those countries which have not yet abolished it, is the requirement that it can only be imposed when the guilt of the accused person "is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". On the evidence in this case, a jury could have reasonably found, for example, that Robedeaux killed McKinney without malice aforethought, but as the result of an accident or during a heated argument, and then engaged in an unlawful disposal of her body to cover up her death.

James Robedeaux is diabetic, as a result of which he has gone blind in one eye and 50 per cent blind in the other. He also receives dialysis three a week for renal failure.

BACKGROUND INFORMATION

The USA has executed 629 prisoners since resuming executions in 1977, more than 400 of which have been carried out since 1990. The administration of the death penalty in the USA is riddled with arbitrariness, unfairness, and unreliability (see *Failing the Future: Death Penalty Developments, March 1998 - March 2000*, AMR 51/03/00, April 2000). Amnesty International opposes the death penalty in all cases, regardless of issues of guilt or innocence.

RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, in your own words using the following as a guide:

- expressing sympathy for the relatives and friends of Nancy McKinney;
- noting that, however disturbing the events that followed Nancy McKinney's death, how or why she died remains unknown to this day;
- expressing concern that the jury at James Robedeaux's trial was not allowed to consider offences less than first-degree murder despite possible alternative scenarios in which the death may have occurred;
- noting that, having denied James Robedeaux's appeal on this issue, a different panel of the 10th Circuit granted Kenneth Hogan a new trial on the same claim five months later;
- noting that the power of executive clemency exists, among other reasons, to compensate for arbitrariness or inequities as a result of rigidities in the courts;
- urging the Board to recommend that the Governor grant clemency to James Robedeaux.

APPEALS (to arrive by 23 May) TO:

Oklahoma Pardon and Parole Board
4040 N. Lincoln Boulevard, Suite 219,
Oklahoma City, OK 73105-5284, USA

Tel: +1 405 427 8601

Fax: +1 405 427 6648

Telegrams: Oklahoma Pardon & Parole Board, 4040 N. Lincoln Blvd, Oklahoma City, USA

Salutation: Dear Board Members

If possible (and if your letter would arrive by 23 May) please also send your appeal to the individual board members: (Salutation for all, Dear (name), eg Dear Mr Ballard):

Mr Currie Ballard, PO Box 171, Coyle, OK 73027-0171, USA
Mr Flint Breckenridge, 2010 Utica Square, Suite 403, Tulsa, OK 74114-1635
Ms Susan Bussey, PO Box 636, Norman, OK 73070-0636, USA
Ms Stephanie Chappelle, PO Box 1945, Tulsa, OK 74101-1945, USA
Mr Patrick Morgan, PO Box 361, Arcadia, OK 73007-0361, USA

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

You may also write brief letters of concern (not more than 250 words) to:

"Your Views", *The Oklahoman*, PO Box 25125, Oklahoma City, OK 73125, USA

Faxes: + 1 415 475 3183

Letters to The Editor, *Tulsa World*, 315 South Boulder Avenue, Tulsa, OK 74103, USA.

Faxes: + 1 918 581 8353

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 23 May 2000